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EXAMINER

TANG, KAREN C

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PAPER NUMBER

2451

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/072,238	Applicant(s) SCHREMPF ET AL.	
	Examiner KAREN C. TANG	Art Unit 2451	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/30/08</u> . | 6) <input type="checkbox"/> Other: _____ |

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- This action is responsive to the amendment and remarks file on 12/30/08.
- Claims 1-45 are presented for further examination.
- Claims 1, 30, 33, 39, and 42 are currently amended.
- Supplemental sent on 1/9/09 was to clarify the records of prosecution.
- New Grounds (e.g., US 112 1st, 2nd, US 103 and Double Patenting) are necessitated by Applicant's amendment.
- Because Applicants have failed to challenge any of the Examiner's Official Notices for Claim 34 and Claim 37, as stated in the previous office action filed on 04/07/08 in a proper, timely and reasonably manner, they are now considered as admitted prior art.
See MPEP 2144.03

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 12/30/08 have been fully considered but they are not persuasive.

Rejection under 35 USC 103

Applicant challenged the office notice and indicate that the official notice was not proper.

Examiner disagrees.

However, as indicated in the office action filed on 4/7/08, that since applicant has "failed" to challenge the "office Notice" it was declare that the features specifically in Claim 34 is well known in the art.

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As demonstrated by a known references such as “Patel et al” (see US 2003/0051100) that the feature as indicated in Claim 34 is well known in the art.

Therefore, the Official Notice in regards to the feature of Claim 34 is maintained that the feature of Claim 34 is well known in the art.

Applicant argues that the prior art of records does not explicitly disclose the newly stated limitation. However, the limitation contains negative limitation not explicitly stated within the specification (e.g., "if said representation is not a new representation, wherein said representation is not sent to at least one second tier identification server if said representation is a new representation" in Claim 1; "wherein said received representation is not sent to the at least one Second Tier identification server if said received representation is a new representation" in Claim 30; “wherein if the representation is not similar to one of said previously received unidentified representation, the representation is not sent to said Tier N+ 1 server." in Claim 33; "wherein if the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier identification server" in Claim 39; and "wherein if the representation is not similar to the previously received unidentified representation the representation is not sent to the Second Tier identification server" in Claim 42) See MPEP 2173.05(i).

For the examining purposes, the limitation is interpreted similar to “wherein if the representation is not similar to the previously received unidentified representation the representation is sent to the Second Tier identification server” which is taught by the reference, see Cusson, refer to Pages 14, Lines 25-30 and Page 15, Lines 25-30.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 12/30/2008. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Double Patenting

Claims 1, 30, 33, 39, and 42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/999763 in view of Cusson et al hereinafter Cusson (WO 0063800).

As per Claim 1, of instant application contains the subject matter claims in the copending application 763'. The 763' application are claiming the common subject matters as follows:

At least one analysis module for receiving transmission of signals from at least one source, the signal including data from a portion of a master recording, dividing said data into a plurality of segments, generating a segment representation of each of the plurality of segments, and transmitting said segment representation of each of the plurality of segments, and transmitting said segment representation to an identification sever and

At least one identification server for receiving said segment representation from said at least one analysis module, comparing said segment representation to a plurality of references segment representation, determining that said segment representation is not identified, and

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adding said segment representation to a list capable of holding a plurality of unidentified segment representations;

The claim 1 of 763' of co-pending application does not contains "send said representation to at least one second tier identification server if said representation is a new representation."

One of ordinary skill in the art would have been motivated to send said representation to at least one second tier identification server if said representation is a new representation.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The limitations such as "if said representation is not a new representation, wherein said representation is not sent to at least one second tier identification server if said representation is a new representation" in Claim 1; "wherein said received representation is not sent to the at least one Second Tier identification server if said received representation is a new representation" in Claim 30; "wherein if the representation is not similar to one of said previously received

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unidentified representation, the representation is not sent to said Tier N+ 1 server." in Claim 33; "wherein if the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier identification server" in Claim 39; and "wherein if the representation is not similar to the previously received unidentified representation the representation is not sent to the Second Tier identification server" in Claim 42 are not explicitly taught in Applicant's specification.

Correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The boundaries of Claims 1-45 does not sought are not set definitely, albeit negatively and was not taught specifically within the specification because the limitation contains negative limitation not explicitly stated within the specification (e.g., "if said representation is not a new representation, wherein said representation is not sent to at least one second tier identification server if said representation is a new representation" in Claim 1; "wherein said received representation is not sent to the at least one Second Tier identification server if said received representation is a new representation" in Claim 30; "wherein if the representation is not similar to one of said previously received unidentified representation, the representation is not sent to said Tier N+ 1 server." in Claim 33; "wherein if the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier

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identification server" in Claim 39; and "wherein if the representation is not similar to the previously received unidentified representation the representation is not sent to the Second Tier identification server" in Claim 42) See MPEP 2173.05(i).

For the examining purposes, the limitation is interpreted similar to “wherein if the representation is not similar to the previously received unidentified representation the representation is sent to the Second Tier identification server”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-30, 32, 33, 35, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Applicant Admitted Prior Art hereinafter AAPA (Background Invention) in view of Cusson et al hereinafter Cusson (WO 0063800) in further view of Patel et al hereinafter Patel (US 2003/0051100).

1. Referring to Claim 1, AAPA disclosed a new media identification system comprising:
at least one analysis module to receive a data stream from one or more of a plurality of sources (..digital media streaming over the internet and direct satellite broadcast, has a much larger audience, refer to Page 3, Lines 11-13, detection module located in the broadcast area to receiving broadcasting signal, refer to Page 3, Lines 2-3), the data stream including data for a

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work (refer to Page 5, Lines 6-8); to generate a representation of the work from at least a portion of said data stream (retain segment of media stream, refer to Page 6, Lines 13), and transmit said representation (pass on the retain segment to the next tier, refer to Page 6, Lines 17-18);

at least one First Tier identification server to receive said representation (next tier received the representation with larger database, refer to Page 6, Lines 15-19); if the first Tier is not able to identify the received said representation, the at least one second Tier identification server to identify said work from said representation (the multi-tier approach is to continue to pass to the next tier that has more comprehensive database, refer to Page 6, Lines 15-19);

Although AAPA disclosed the invention substantially as claimed, AAPA is silent regarding the limitation indicating, “the first tier identification server to determine whether said work from said representation is identifiable, to determine whether said representation is a new representation based on comparing the representation to previously received unidentified representation maintained in a data record if said work is not identifiable wherein the representation is a new representation if the representation is not similar to the previously received unidentified representation, to add the representation to the data record if the representation is a new representation and, and to send said representation to at least one Second identification server if said representation is not a new representation; and to send said representation to at least one Second identification server if said representation is a new representation.”

Cusson, in an analogous art disclosing:

“the first tier identification server (203 (i), servers, refer to Page 7, Lines 26) to determine whether said work (dataset, refer to Page 8, Lines 29) from said representation (query,

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refer to Page 8, Lines 28) is identifiable (determine whether datasets is present in the cached data, refer to Page 8, Lines 28-31), is a new representation based on comparing the representation to previously received unidentified representation maintained in a data record (determining an identifier corresponding to the received query is known (e.g., similar, to the stored dataset identifier corresponding to a cache missed in another word “previously received unidentified representation”, Page 14, Lines 5-17) if said work is not identifiable (when dataset cannot be found in the cached data, refer to Page 12, Lines 18-19), to add the representation to the data record if the representation is a new representation (refer to Page 14, Lines 12-13) and to send said representation to at least one second Tier identification server if said representation is similar to the previously received unidentified representation and to send said representation to at least one Second identification server if said representation is a new representation (refer to Pages 14, Lines 25-30 and Page 15, Lines 25-30) .”

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine AAPA and Cusson because Cusson's teaching of “the first tier identification server to determine whether said work from said representation is identifiable, to determine whether said representation is a new representation based on comparing the representation to previously received unidentified representation maintained in a data record if said work is not identifiable wherein the representation is a new representation if the representation is not similar to the previously received unidentified representation, to add the representation to the data record if the representation is a new representation and, and to send said representation to at least one Second identification server if said representation is not a new representation; and to send said representation to at least one Second identification server if said

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representation is a new representation” would improve system efficient of AAPA's by providing a process that is capable of determine what to cache on the basis of probable future request for the information to reduce the cost and resource for determine when a “miss” occur repetitively in the cache/database (as supported by Patel, see par 0013).

2. Referring to Claim 2, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said at least one analysis module further includes an input port configured to receive said data from a networked source (refer to Page 3, Lines 7).

3. Referring to Claim 3, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said at least one analysis module further includes an input port configured to receive said data from a broadcast source (refer to Page 4, Lines 9).

4. Referring to Claim 4, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said at least one analysis module further includes an input port configured to receive said data in the form of a pre-broadcast digital form (refer to Page 4, Lines 1).

5. Referring to Claim 5, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said at least one analysis module and said at least one First Tier Identification server coupled over a network (refer to Page 5, Lines 1-15).

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6. Referring to Claim 6, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said network comprises the internet (refer to Page 5, Lines 14).

7. Referring to Claim 7, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said representation comprises feature vectors (AAPA disclosed the representation could be using the feature factors because these are well known in the art, refer to Page 12, Lines 19);

8. Referring to Claim 8, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said representation comprises a spectral representation of said received work (AAPA disclosed the representation could be using the feature factors because these are well known in the art, refer to Page 13, Lines 1-2);

9. Referring to Claim 9, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said representation comprises the text output of a speech recognition system (AAPA disclosed the representation could be using the feature factors because these are well known in the art, refer to Page 13, Lines 1-3);

10. Referring to Claim 10, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said representation comprises the musical score output of a music transcription system (AAPA disclosed the representation could be using the feature factors because these are well known in the art, refer to Page 13, Lines 1-5);

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11. Referring to Claim 11, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said representation comprises a bit calculated key (AAPA disclosed the representation could be using the feature factors because these are well known in the art, refer to Page 13, Lines 1-9);

12. Referring to Claim 12, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said First Tier Identification server is configured to identify said received work using feature vector from said representation (AAPA disclosed the it is well known in the art to for servers to identify received work using variety of method known in the art, refer to Page 14, Lines 5-9 and Page 12, Lines 18-20);

13. Referring to Claim 13, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said First Tier Identification server is configured to identify said received work using a spectral representation of said received work (AAPA disclosed the representation could be using the feature factors because these are well known in the art, refer to Page 13, Lines 1-2);

14. Referring to Claim 14, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said First Tier Identification server is configured to identify said received work using the text output of a speech recognition system from said representation (AAPA

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disclosed the it is well known in the art to for servers to identify received work using variety of method known in the art, refer to Page 14, Lines 10-17 and Page 12, Lines 18-20);

15. Referring to Claim 15, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said First Tier Identification server is configured to identify said received work using the musical score output of a music transcription system from said representation (AAPA disclosed the it is well known in the art to for servers to identify received work using variety of method known in the art, refer to Page 14, Lines 10-20 and Page 12, Lines 18-20);

16. Referring to Claim 16, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said First Tier Identification server is configured to identify said received work using a bit calculated key from said representation (AAPA disclosed the it is well known in the art to for servers to identify received work using variety of method known in the art, refer to Page 14, Lines 10-17 and Page 12, Lines 18-20);

17. Referring to Claim 17, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said Second Tier Identification server is configured to identify said received work using feature vector from said representation (AAPA disclosed the it is well known in the art to for servers to identify received work using variety of method known in the art, refer to Page 14, Lines 5-9 and Page 12, Lines 18-20);

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18. Referring to Claim 18, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed

wherein said Second Tier Identification server is configured to identify said received work using a spectral representation of said received work (AAPA disclosed the representation could be using the feature factors because these are well known in the art, refer to Page 13, Lines 1-2);

19. Referring to Claim 19, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed

wherein said Second Tier Identification server is configured to identify said received work using the text output of a speech recognition system from said representation (AAPA disclosed the it is well known in the art to for servers to identify received work using variety of method known in the art, refer to Page 14, Lines 10-17 and Page 12, Lines 18-20);

20. Referring to Claim 20, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed

wherein said Second Tier Identification server is configured to identify said received work using musical score output of a music transcription system from said representation (AAPA disclosed the it is well known in the art to for servers to identify received work using variety of method known in the art, refer to Page 14, Lines 10-20 and Page 12, Lines 18-20);

21. Referring to Claim 21, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed

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wherein said Second Tier Identification server is configured to identify said received work using using a bit calculated key from said representation (AAPA disclosed the it is well known in the art to for servers to identify received work using variety of method known in the art, refer to Page 14, Lines 10-17 and Page 12, Lines 18-20);

22. Referring to Claim 22, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed the one analysis modules are further configured to received a plurality of streaming source for analysis at the single location (refer to refer to Page 5, Lines 10-15).

23. Referring to Claim 23, AAPA, Cusson and Patel disclosed the system of claim 1, AAPA futher disclosed wherein said at least one analysis modules are further configured to receive a plurality of streaming sources for analysis at a plurality of different access point of the network (refer to receiving media streams, refer to Page 6, lines 12-13).

24. Referring to Claim 24, AAPA, Cusson and Patel disclosed system of Claim 1, AAPA disclosed wherein said at least one analysis module is configured to provide said representations to said at least one First Tier ID server at a predetermined time internal (refer to Page 5, Lines 8-10).

25. Referring to Claim 25, AAPA, Cusson and Patel disclosed system of Claim 1, wherein said predetermined time interval comprises at least once a day (refer to Page 5, Lines 8-10)

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26. Referring to Claim 26, AAPA, Cusson and Patel disclosed system of Claim 24, AAPA disclosed wherein said predetermined time interval comprises approximately once an hour (refer to Page 5, Lines 8-10);

27. Referring to Claim 27, AAPA, Cusson and Patel disclosed system of Claim 24, AAPA disclosed wherein said predetermined time interval comprises approximately once an hour (refer to Page 5, Lines 8-10).

28. Referring to Claim 28, AAPA, Cusson and Patel disclosed the system of Claim 24, AAPA wherein said at least one analysis module is configured to provide said representation to said at least one First Tier identification server based on an out of band event (refer to Page 2, Lines 1-5).

29. Referring to Claim 29, AAPA, Cusson and Patel disclosed the system of Claim 1, AAPA wherein said First Tier Identification server is further configured to generate a playlist of identified work (refer to Page 5, Lines 10-15).

30. Referring to Claim 30, AAPA disclosed a method for identifying a work from data received by an analysis module that generates a representation of said data and wherein said data includes data of said work comprising:

receiving a representation of the work by a First Tier Identification server (next tier received the representation with larger database, refer to Page 6, Lines 15-19);

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attempting, by said First Tier Identification server, to identify said work based on comparing the received representation to a plurality of cached representation (refer to Page 6, Lines 12-18);

Although AAPA disclosed the invention substantially as claimed, AAPA is silent regarding the limitation indicating, “the first tier identification server to determine whether said work from said representation is identifiable, to determine whether said representation is a new representation based on comparing the representation to previously received unidentified representation maintained in a data record if said work is not identifiable wherein the representation is a new representation if the representation is not similar to the previously received unidentified representation, to add the representation to the data record if the representation is a new representation and, and to send said representation to at least one Second identification server if said representation is not a new representation; and to send said representation to at least one Second identification server if said representation is a new representation.”

Cusson, in an analogous art disclosing:

“the first tier identification server (203 (i), servers, refer to Page 7, Lines 26) to determine whether said work (dataset, refer to Page 8, Lines 29) from said representation (query, refer to Page 8, Lines 28) is identifiable (determine whether datasets is present in the cached data, refer to Page 8, Lines 28-31), is a new representation based on comparing the representation to previously received unidentified representation maintained in a data record (determining an identifier corresponding to the received query is known (e.g., similar, to the stored dataset identifier corresponding to a cache missed in another word “previously received

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unidentified representation”, Page 14, Lines 5-17) if said work is not identifiable (when dataset cannot be found in the cached data, refer to Page 12, Lines 18-19), to add the representation to the data record if the representation is a new representation (refer to Page 14, Lines 12-13) and to send said representation to at least one second Tier identification server if said representation is similar to the previously received unidentified representation and to send said representation to at least one Second identification server if said representation is a new representation (refer to Pages 14, Lines 25-30 and Page 15, Lines 25-30) .”

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine AAPA and Cusson because Cusson's teaching of “the first tier identification server to determine whether said work from said representation is identifiable, to determine whether said representation is a new representation based on comparing the representation to previously received unidentified representation maintained in a data record if said work is not identifiable wherein the representation is a new representation if the representation is not similar to the previously received unidentified representation, to add the representation to the data record if the representation is a new representation and, and to send said representation to at least one Second identification server if said representation is not a new representation; and to send said representation to at least one Second identification server if said representation is a new representation” would improve system efficient of AAPA's by providing a process that is capable of determine what to cache on the basis of probable future request for the information to reduce the cost and resource for determine when a “miss” occur repetitively in the cache/database (as supported by Patel, see par 0013).

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31. Referring to Claim 32, AAPA, Cusson and Patel disclosed the method of Claim 30, AAPA disclosed the act of providing a reference database of representation expected to be detected on said First Tier Identification Server (refer to Page 6, Lines 10-20).

32. Referring to Claim 33, AAPA disclosed a system for identifying a work using an N Tiered Identification server system wherein said work is included in data received by an analysis module and wherein said analysis module generate a representation of said data and transmits said representation to said N tiered identification server system comprising:

a Tier N server including a database of a first plurality of representation of identified work (refer to Page 6, Lines 13-19) and list of previously received unidentified representation (refer to Page 6, Lines 12-14);

at least one Tier N+1 server including a database of a second plurality of representations of identified works (the next tier has a bigger database that contains representations of identified work, refer to Page 6, Lines 13-19);

wherein said Tier N server is configured to receive a representation and attempt to identify a work by comparing said representation to representation in said first plurality of representation (refer to Page 6, Lines 12-18);

Although AAPA disclosed the invention substantially as claimed, AAPA is silent regarding the limitation indicating,

“a Tier N contains a list of previously received unidentified representations;

Tier N server compare said representation to the previously received unidentified representation in the list if said representation does not correspond to one of said first plurality of

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representation, and to send said representation to said Tier N+1 server for identification if said representation is similar to one of said previously received unidentified representation; wherein if the representation is not similar to one of said previously received unidentified representation, the representation is sent to said Tier N+1 server”

Cusson, in an analogous art disclosing

“a Tier N contains a list of previously received unidentified representations (lists of entry 501(i), refer to Page 14, Lines 5);

Tier N server compare said representation to the previously received unidentified representation in the list if said representation does not correspond to one of said first plurality of representation (queries datasets are not found, refer to Page 12, Lines 18-19), and to send said representation to said Tier N+1 server for identification (refer to Col 5, Lines 50-60 and Col 12, Lines 50-67) if said representation is similar to one of said previously received unidentified representation (determining an identifier corresponding to the received query is known (e.g., similar) to the stored dataset identifier corresponding to a cache missed in another word “previously received unidentified representation”, Page 14, Lines 5-17); wherein if the representation is not similar to one of said previously received unidentified representation, the representation is sent to said Tier N+1 server (refer to Pages 14, Lines 25-30 and Page 15, Lines 25-30)”

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine AAPA and Cusson because Cusson's teaching of “a Tier N contains a list of previously received unidentified representations and Tier N server compare said

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representation to the previously received unidentified representation in the list if said representation does not correspond to one of said first plurality of representation, and to send said representation to said Tier N+1 server for identification if said representation is similar to one of said previously received unidentified representation; wherein if the representation is not similar to one of said previously received unidentified representation, the representation is sent to said Tier N+1 server” would improve system efficient of AAPA's by providing a process that is capable of determine what to cache on the basis of probable future request for the information to reduce the cost and resource for determine when a “miss” occur repetitively in the cache/database (as supported by Patel, see par 0013).

33. Referring to Claim 35, AAPA, Cusson and Patel disclosed the system of Claim 33, AAPA disclosed wherein each successive said at least one Tier N+ 1 server includes a database larger said database of said N Tier server (refer to Page 6, Lines 18).

34. Referring to Claim 38, AAPA, Cusson and Patel disclosed the system of Claim 33, AAPA disclosed wherein each successive said at least one Tier N+ 1 server includes a database larger said database of said N Tier server (refer to Page 6, Lines 18).

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art hereinafter AAPA in view of Cusson et al hereinafter Cusson (WO 0063800) in further view Patel et al hereinafter Patel (US 2003/0051100) and Official Notice (Admitted Prior Art).

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35. Referring to Claim 34, the system of claim 33. AAPA did not explicitly teach wherein said at least one Tier N+ 1 server is configured to notify said Tier N server of a repeating segment if a repeating segment is identified.

Official Notice is taken that it would have been obvious to a person of ordinary skill in the art to indicate the notification of the servers from the Tier N+1 server to the Tier N server.

The suggestion/motivation would have been that by providing the notification, it would provide the information to let the system to know that the search/query of the presentation is complete and thus the system can stop the task of updating search without further use unnecessary bandwidth.

Claims 31 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art hereinafter AAPA in view of Cusson et al hereinafter Cusson (US 6,487,641) in further view of Patel et al hereinafter Patel (US 2003/0051100) and Ward (US 6,526,411).

36. Referring to Claim 31, AAPA, Cusson and Patel disclosed the system of Claim 30, although AAPA, Cusson and Patel disclosed the invention substantially as claimed, AAPA did not explicitly disclosing “wherein said second tier identification server includes a plurality of tiers of identification servers.”

Ward, in an analogous art disclosed, “wherein said second tier identification server includes a plurality of tiers of identification servers (refer to Col 5, Lines 30-46).”

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It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine AAPA, Cusson, Patel and Ward because Ward's teaching of "wherein said second tier identification server includes a plurality of tiers of identification servers" demonstrates the obviousness as indicated by AAPA that the method and the system are utilizing the "multi-tier" approach, so, within a server, it could includes a plurality of tiers of servers, which can improve the system's efficiently by expertise the searching time of a items by utilizing plurality of resources.

37. Referring to Claim 36, the system of claim 35, although AAPA and Cusson disclosed the invention substantially as claimed, AAPA is silent regarding "wherein all said at least one N+1 tiers operate in parallel."

Ward, in an analogous art disclosed, wherein all said at least one N+1 tiers operate in parallel (refer to Col 7, Lines 60-67 and Col 8, Lines 1-10).

Hence, providing functions disclosed by Ward, would be desirable for a user to implement in a system so it is easy to use, and can easily add or subtract music or videos.

Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the system of AAPA and Cusson, by including the features presented by Ward.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art hereinafter AAPA in view of Cusson et al hereinafter Cusson (US 6,487,641) in further view of Patel et al hereinafter Patel (US 2003/0051100) and Ward (US 6,526,411) with Official Notice (Admitted Prior Art).

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38. Referring to Claim 37, the system of claim 36, although AAPA, Cusson and Ward disclosed the invention substantially as claimed. AAPA, is silent regarding wherein the operation of said N+1 tiers is aborted upon the identification of an unknown segment by a member of said successive tiers.

Official Notice is taken that it would have been obvious to a person of ordinary skill in the art to indicate the notification of the servers from the Tier N+1 server to the Tier N server.

The suggestion/motivation would have been that by providing the notification, it would provide the information to let the system to know that the search/query of the presentation is complete and thus the system can stop the task of updating search without further use unnecessary bandwidth.

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 39, 41, 42, 44, and 45 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant Admitted Prior Art hereinafter AAPA (Background Invention).

39. Referring to Claim 39, AAPA disclosed a system for identifying new media comprising:
means for receiving representation of a word by a First Tier Identification server (next tier received the representation with larger database, refer to Page 6, Lines 15-19);

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means for attempting, by said First Tier Identification server, to determine whether said work from said representation is identifiable based on comparing the received representation to a plurality of cached representation (refer to Page 6, Lines 12-18);

means for determining whether said representation is similar to a previously received unidentified representation based on comparing the received representation to a list of unidentified representation if said work is not identified (optional language, in this case, the First Tier has identified the work, Page 5, Lines 10-15, therefore, rest of the limitations below is therefore mooted);

means for determine whether said representation is similar to a previously received unidentified representation based on comparing the received representation to a list of unidentified representation if said work is not identified;

means for adding the received representation to the list of unidentified representations if said representation is not similar to an unidentified representation in the list; means for sending said representation to a Second Tier Identification server for identification if said representation is similar to a previously received unidentified representation, wherein if the representation is not similar to the previously received unidentified representation, the representation is not sent to the Second Tier identification server; and means for caching said representation in the First Tier Identification server if the representation is identified by the second Tier Identification server.

40. Referring to Claim 41, AAPA disclosed the method of Claim 39, AAPA disclosed the act of providing a reference database of representation expected to be detected on said First Tier Identification Server (refer to Page 6, Lines 10-20).

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41. Referring to Claim 42, AAPA disclosed a program storage device readable by a machine containing a set of instructions to perform a method by the machine, the method comprising:

receiving a representation of a work by a First Tier Identification server (next tier received the representation with larger database, refer to Page 6, Lines 15-19) wherein the representation was generated from at least a portion of a data stream that included the work, media stream comprising contents, refer to Page 5, Lines 5-7, retain segment of media stream, refer to Page 6, Lines 13);

attempting, by said First Tier Identification server, to identify said work based on comparing the received representation to a plurality of cached representation (refer to Page 6, Lines 12-18);

if the First Tier Identification server has not identified the work (optional language, in this case, the First Tier has identified the work, Page 5, Lines 10-15, therefore, rest of the limitations is therefore mooted), determining whether said representation is similar to a previously received unidentified representation; and if said representation is similar to the previously received unidentified representation, sending said received representation to a Second Tier Identification server to identification, wherein if the representation is not similar to the previously received unidentified representations, the representation is not sent to the Second Tier identification server.

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42. Referring to Claim 44, AAPA disclosed the device of Claim 42, AAPA disclosed the act of providing a reference database of representation expected to be detected on said First Tier Identification Server (refer to Page 6, Lines 10-20).

43. Referring to Claim 45, AAPA disclosed the system of Claim 1, AAPA further disclosing the at least one First Tier identification server to add said representation to an index of unidentified representation (server 203 comprising capability to adds a query information, refer to Page 14, Lines 14-17 and Lines 20-22) if the representation is identified by the Second Tier Identification server (corresponding to the status of the source database/server, the First Tier servers 203 updates its database information, refer to Page 17, Lines 1-7) if said representation is not similar to any previously received unidentified representation (keep of tracks of the number of times when a query/representation is not being found, refer to Page 14, lines 2-4 and 10-16).

Claims 40 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art hereinafter AAPA in view of Ward (US 6,526,411).

44. Referring to Claim 40, AAPA disclose the system of Claim 39, although AAPA disclosed the invention substantially as claimed, AAPA did not explicitly teach wherein said second tier identification server includes a plurality of tiers of identification servers.

Ward, in an analogous art disclosed, wherein said second tier identification server includes a plurality of tiers of identification servers (refer to Col 5, Lines 30-46).

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It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine AAPA and Ward because Ward's teaching of "wherein said second tier identification server includes a plurality of tiers of identification servers" demonstrates the obviousness as indicated by AAPA that the method and the system are utilizing the "multi-tier" approach, so, within a server, it could includes a plurality of tiers of servers, which can improve the system's efficiently by expertise the searching time of a items by utilizing plurality of resources.

45. Referring to Claim 43, AAPA disclosed the device of Claim 42, although AAPA disclosed the invention substantially as claimed, AAPA did not explicitly teach wherein said second tier identification server includes a plurality of tiers of identification servers.

Ward, in an analogous art disclosed, wherein said second tier identification server includes a plurality of tiers of identification servers (refer to Col 5, Lines 30-46).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine AAPA and Ward because Ward's teaching of "wherein said second tier identification server includes a plurality of tiers of identification servers" demonstrates the obviousness as indicated by AAPA that the method and the system are utilizing the "multi-tier" approach, so, within a server, it could includes a plurality of tiers of servers, which can improve the system's efficiently by expertise the searching time of a items by utilizing plurality of resources.

Conclusion

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Examiner's Notes: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen C. Tang whose telephone number is (571)272-3116. The examiner can normally be reached on M-F 7 - 3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571)272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/K. C. T./
Examiner, Art Unit 2451

/Larry D Donaghue/
Primary Examiner, Art Unit 2454